Gurcharan Singh a/l Bachittar Singh @ Guru v Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-7 OF 2000(W)
MOHAMED DZAIDDIN CHIEF JUSTICE, AHMAD FAIRUZ CJ (MALAYA) AND STEVE SHIM CJ (SABAH AND SARAWAK)
12 SEPTEMBER 2002

Preventive Detention *— Extension order — Validity of — Extension order did not state grounds of detention — Whether extension order valid — Whether grounds of detention had to be stated in the extension order — Internal Security Act 1960 s 8(7)*

The appellant was detained under s 8(1) of the Internal Security Act 1960 ('the Act') for a period of two years pursuant to a detention order dated 3 November 1989 ('the initial order'). On 31 October 1991, the appellant's detention was extended for another two years ('the extension order') under s 8(7) of the Act. The extension order was subsequently cancelled on 2 February 1993 and the appellant was released. Thereafter, the appellant filed a writ of summons in which he asked for, inter alia, a declaration that the extension order was null and void and of no effect. The appellant's contention was that s 8(7) of the Act makes it imperative for the grounds of detention to be stated in the extension order so that the person detained after the expiry of the original detention order would be able to know whether he could make any representations under s 11 of the Act. The appellant argued that the grounds had not been stated in the extension order and hence, the extension order was invalid. For the respondents, it was argued that the extension order was not a new order but was an extension of the original detention order and that the grounds stated in the initial order were applicable to the extension order. The High Court at Kuala Lumpur held that the extension order was null and void. The respondents appealed to the Court of Appeal, which by a majority decision, allowed the appeal and set aside the High Court decision. The Court of Appeal held that the extension order was valid. The appellant obtained leave to appeal to this court and the question referred was whether the extension order was a valid order.

Held, dismissing the appeal:

(1) The court found nothing in s 8(1) that could indicate that grounds were to be stated in the detention order. Section 8(7) only makes mention of 'grounds'. The proviso to s 8(7) unequivocally specifies that those whose detentions have been extended on different grounds or partly on different grounds are entitled to exercise the same rights under s 11 as if the extended orders were initial orders. In other words, they were entitled to make representations against the extension orders to the Advisory Board. Such entitlement would invoke the application of

s 11(2)(b) which, inter alia, requires the detainee to be furnished with a statement in writing of the grounds on which the extension order was made. The very existence of s 11(2)(b)(i) clearly supported the view that the initial orders under s 8(1) and the extension orders under s 8(7) need not specify the grounds. Otherwise s 11(2)(b)(i) would be redundant. The court could not find anything in s 8(7) that even suggested that the grounds must have been stated in the extension order. If grounds are not expected to be stated in the initial order, they cannot be expected to be stated in the extension order. It was not necessary to state the grounds in the extension order. The appellant's contention that the grounds must be stated in the extension order was without merit (see p 264B–F).

(2) It was obvious from the proviso to s 8(7) that the appellant was entitled to the statement if the extension order was made on grounds different from those stated in the initial order or if the extension order was made partly on the same grounds and partly on different grounds from those stated in the initial order. This is so because the proviso stipulates that under those circumstances, the extension order is to be considered as if it was a fresh order, and hence the appellant is entitled to make representations to the Advisory Board under s 11 of the Act, and the statement is required by s 11(2)(b)(i) of the Act. This evidently meant that if the extension order was made on the same grounds, then the order was not deemed a fresh order and therefore no question of representation under s 11 arose and consequently no statement under s 11(2)(b)(i) was required. A statement under s 11(2)(b)(i) of the Act need not be made in cases where the extension order was made on the same grounds as those on which the initial order was made. Thus, the extension order was a valid order (see pp 264G–265A).

[Bahasa Malaysia summary

Perayu telah ditahan di bawah s 8(1) Akta Keselamatan Dalam Negeri 1960 ('Akta tersebut') selama dua tahun menurut satu perintah tahanan yang bertarikh 3 November 1989 ('perintah asal'). Pada 31 Oktober 1991, tahanan perayu telah dilanjutkan selama dua tahun ('perintah lanjutan') di bawah s 8(7) Akta tersebut. Perintah lanjutan tersebut dibatalkan pada 2 Februari 1993 dan perayu telah dibebaskan. Setelah itu, perayu telah memfailkan satu writ saman di mana beliau telah memohon, inter alia, satu deklarasi bahawa perintah lanjutan tersebut batal dan tak sah. Perayu telah mengatakan bahawa s 8(7) Akta tersebut telah menjadikannya mustahak bahawa alasan-alasan tahanan diberikan di dalam perintah lanjutan tersebut untuk membolehkan orang yang ditahan mengetahui sama ada beliau boleh membuat representasi-representasi di bawah s 11 Akta tersebut selepas perintah asal luput. Perayu mengatakan bahawa tiada alasan

yang telah diberi di dalam perintah lanjutan, dan oleh yang demikian, perintah lanjutan tersebut tidak sah. Pihak responden pula telah mengatakan bahawa perintah lanjutan tersebut bukan merupakan perintah yang baru tetapi lanjutan kepada perintah asal dan alasan-alasan yang diberikan di dalam perintah asal terpakai untuk perintah lanjutan tersebut. Mahkamah Tinggi Kuala Lumpur memutuskan bahawa perintah lanjutan tersebut adalah batal dan tak sah. Responden-responden telah merayu kepada Mahkamah Rayuan, yang, secara majoriti, telah membenarkan rayuan tersebut dan mengenepikan keputusan Mahkamah Tinggi. Mahkamah Rayuan telah memutuskan bahawa perintah lanjutan tersebut adalah sah. Perayu telah dibenarkan merayu kepada mahkamah ini dan soalan yang dirujuk adalah sama ada perintah lanjutan tersebut adalah sah.

Diputuskan, menolak rayuan tersebut:

(1) Mahkamah tidak dapat mencari apa-apa di dalam s 8(1) yang dapat menunjukkan bahawa alasan-alasan mesti dinyatakan di dalam perintah tahanan. Seksyen 8(7) hanya menyebut 'grounds'. Proviso kepada s 8(7) dengan jelas mengatakan bahawa orang yang tahanannya telah dilanjutkan di atas alasan-alasan yang berlainan atau alasan-alasan yang sebahagian berlainan berhak menggunakan hak-hak yang sama di bawah s 11 seperti jika perintah lanjutan tersebut merupakan perintah asal. Di dalam perkataan lain, mereka dapat membuat representasi-representasi terhadap perintah lanjutan tersebut kepada Lembaga Penasihat. Hak sedemikian akan memakai s 11(2)(b) yang, antara lain, memperuntukkan bahawa orang yang ditahan perlu diberi pernyataan bertulis di atas mana perintah lanjutan tersebut dibuat. Seksyen 11(2)(b)(i) menyokong pandangan bahawa perintah asal di bawah s 8(1) dan perintah lanjutan di bawah s 8(7) tidak perlu menyatakan alasan-alasan. Jikalau tidak, s 11(2)(b)(i) tidak diperlukan. Mahkamah tidak dapat mencari apa-apa di dalam s 8(7) yang menyatakan bahawa alasan-alasan perlu dinyatakan di dalam perintah lanjutan. Jikalau alasan-alasan tidak perlu dinyatakan di dalam perintah asal, alasan-alasan juga tidak perlu dinyatakan di dalam perintah lanjutan. Pernyataan perayu bahawa alasan-alasan perlu dinyatakan di dalam perintah lanjutan tidak bermerit (lihat ms 264B–F).

(2) Adalah jelas daripada proviso kepada s 8(7) bahawa perayu berhak mendapat pernyataan alasan-alasan tersebut jikalau perintah lanjutan dibuat di atas alasan-alasan yang berlainan daripada alasan-alasan di dalam perintah asal atau jikalau perintah lanjutan dibuat di atas sebahagian alasan-alasan yang sama dan sebahagian alasan-alasan yang berlainan daripada perintah asal. Ini adalah kerana proviso tersebut memperuntukkan bahawa keadaan seperti itu, perintah lanjutan akan dianggap sebagai perintah baru, dan oleh itu perayu berhak membuat representasi-representasi kepada Lembaga Penasihat di bawah s 11 Akta tersebut, dan pernyataan

alasan-alasan tersebut diperlukan di bawah s 11(2)(b)(i) Akta tersebut. Ini bermakna bahawa jikalau perintah lanjutan dibuat di atas alasan-alasan yang sama, perintah tersebut bukan merupakan perintah baru dan oleh itu tiada soalan representasi di bawah s 11 yang dibangkitkan dan selanjutnya pernyataan di bawah s 11(2)(b)(i) tidak diperlukan. Pernyataan di bawah s 11(2)(b)(i) Akta tersebut tidak perlu dibuat di dalam kes-kes di mana perintah lanjutan dibuat di atas alasan-alasan yang sama seperti alasan-alasan perintah asal. Oleh itu, perintah lanjutan adalah perintah yang sah (lihat ms 264G–265A).

Notes

For cases on validity of extension orders, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1340–1344

Cases referred to

Gurcharan Singh a/l Bachittar Singh @ Guru v Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors [2000] 2 MLJ 1 (refd)

Karam Singh v Menteri Hal Ehwal Dalam Negeri [Minister of Home Affairs], Malaysia [1969] 2 MLJ 129 (refd)

Legislation referred to

Internal Security Act 1960 ss 8, (1), (7), 11, (1), (2), (b), (i), (3), 81(3),

Appeal from: Civil Appeals Nos W–01–267–96 and W–01–290–96 (Court of Appeal, Kuala Lumpur)

Karpal Singh (*Gobind Singh Deo* with him) (*Karpal Singh & Co*) for the appellants.

Abdul Wahab Mohamed (Peguam Kanan Persekutuan, Kementerian Dalam Negeri) for the respondents.

Ahmad Fairuz CJ (Malaya) (delivering judgment of the court): The appellant, Gurcharan Singh a/l Bachittar Singh @ Guru, was detained under s 8(1) of the Internal Security Act 1960 ('the Act') for a period of two years. The order detaining the appellant was dated 3 November 1989. On 31 October 1991, the appellant's detention was extended for another two years. The extension order was made under s 8(7) of the Act and was dated 31 October 1991. On 2 February 1993 the extension order was cancelled. The cancellation order was made under s 81(3) of the Act and was dated 2 February 1993. The appellant was released on 5 February 1993. On 29 October 1994, he filed a writ of summons in which he asked for, inter alia, a declaration that the extension order was null and void and of no effect. The High Court at Kuala Lumpur held that the extension order was null and void. The respondents appealed to the Court of Appeal which, by

a majority decision, allowed the appeal and set aside the High Court decision. It held that the extension order dated 31 October 1991 was valid. The appellant obtained leave to appeal to this court and the question referred to us is 'whether the extension order is a valid order'.

As the extension order was made under s 8(7) of the Act, it would be appropriate at the outset to set out the provision which reads:

> The Minister may direct that the duration of any detention order or restriction order be extended for such further period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, either:
>
> (a) on the same grounds as those on which the order was originally made;
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> (b) on grounds different from those on which the order was originally made; or
>
> (c) partly on the same grounds and partly on different grounds:
>
> Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12 shall apply accordingly.

It was argued on behalf of the appellant that this section makes it imperative for extension orders to state the grounds of detention so that the person detained after the expiry of the detention order would be able to know whether he could make any representations under s 11 of the Act. The appellant contended that the grounds had not been stated in the extension order. As such, the order, according to the appellant, was invalid.

For the respondents, it was argued that the extension order is not a new order. It is an extension of the original detention order ('the initial order') dated 3 November 1989. To the respondents, the grounds stated in the initial order are applicable to the extension order, unless the extension order is based on grounds which are different from those stated in the initial order. It was also contended that s 8(1) of the Act specifies three grounds and the initial order states in clear terms that the appellant was detained on the first ground, ie that his activities were prejudicial to the security of Malaysia. As such, the extension order is a valid order.

On the issue of whether the grounds for detention must be stated in the extension order, Mokhtar Sidin JCA said (see *Gurcharan Singh a/l Bachittar Singh @ Guru v Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors* [2000] 2 MLJ 1 at p 23):

> In my view, the normal and natural meaning of an extension order is an extension of the initial order in entirety unless otherwise stated. It means whatever grounds stated in the initial order are applicable to the extension order unless different grounds or partly on different grounds are stated as provided for by s 8(7). It should be remembered that the extension here is the extension of the length of his detention under the Act. If it is true that the extension order here did not state any ground, I am of the view that one must fall back to the initial order to see the grounds for detention. It cannot be assumed that the extension order was on different grounds or partly on different grounds.

At p 159 of the appeal record ('the AR'), the learned judge, when referring to the extension order, remarked that the same three paragraphs as found in the first preamble of the initial order were also found in the extension order. The translated version of the paragraphs read (also at p 24 of the reported Court of Appeal judgment):

> Whereas I am satisfied that this Order is necessary to be issued against the person named below with a view of preventing from acting in any manner prejudicial to:
>
> (a) the security of Malaysia;
>
> (b) the maintenance of essential services in Malaysia;
>
> (c) the economic life of Malaysia.

The learned judge then pointed out that paras (b) and (c) in both the initial and extension orders had been deleted. This, according to the learned judge, means that the appellant 'was detained under the initial order and the extension order solely on the ground that his activities were prejudicial to the security of Malaysia'. The learned judge therefore held that 'it is not correct to say there was no ground given or stated in the extension order'. Commenting on the appellant's contention that the ground stated in the extension order is not as required by the Act, which required the grounds to be as stated in the statement under s 11(2) of the Act, the learned judge opined, at p 120 of the AR, that the statement sets out in detail the activities of a detainee (at p 25 of the reported Court of Appeal judgment):

> ... which led the Minister coming to the conclusion that there were grounds to detain the detainee. The grounds were stated in the order and the statement. The statement also contained allegations of facts and the charges. The purpose of this statement was to enable the plaintiff to prepare his case against the charges and the allegations made against him when he made his representations before the Advisory Board. The statement ... were nothing more but detailed particulars of his activities. The ground of his detention was that his activities were prejudicial to the security of Malaysia. To me, that was the ground of his detention in the initial order. The same ground was also used for his continued detention under the extension order. Since the continued detention was on the same ground, there was no necessity to supply him with the statement under s 11(2) anymore as stated by the proviso to s 8(7).

In his judgment, NH Chan JCA said (see p 7 of the reported Court of Appeal judgment):

> I have had the advantage of reading the judgment in draft of my Lord Mokhtar Sidin JCA and I agree with him that the appeal of the plaintiff should be dismissed and the appeal of the defendants allowed.

And as to the issue of grounds not being stated in the extension order, NH Chan JCA said (see p 8 of the reported Court of Appeal judgment):

> Under s 8(1) there are three grounds or reasons for which a person can be detained under the ISA [Internal Security Act 1960]. These grounds or reasons for detaining a person are necessary, according to the ISA, to prevent such a person from acting in a manner that would be prejudicial to *the security of Malaysia* or to *the maintenance of essential services in the country* or to the *economic life of the country*. So that, if the Minister thinks that the detention of

A the person is necessary for any one of those three grounds or reasons, he can make an order for that person's detention for up to two years under the ISA. (Emphasis added.)

Referring to the grounds stipulated under s 11(2) of the Act, the learned judge, inter alia, said (see p 9 of the reported Court of Appeal judgment):

B At the same time he must also be furnished by the Minister with a statement in writing of the grounds on which the order was made (s 11(2)(b)(i)), the allegations of fact on which the order was based (s 11(2)(b)(ii)), and any other particulars that the Minister might wish to let him have (s 11(2)(b)(iii)).

As required by s 11(2)(b) the plaintiff was furnished with a written statement of the grounds on which the detention order was made and the C allegations of fact on which the order was based ....

Strictly speaking, the written statement under s 11(2)(b) should give: (i) the grounds on which the detention order was made; and (ii) the allegations of fact on which the detention order was based. The grounds on which the detention order was made were the grounds that were given for his detention under s 8(1).

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As to the ground appearing in the extension order, the learned judge said (see p 11 of the reported Court of Appeal judgment):

As can be seen from this document, grounds (b) and (c) in the text of this order have been deleted, so that the sole ground or reason for the extension of the period of the detention order on the plaintiff was ground (a) (which was E for preventing him from acting in any manner prejudicial to 'the security of Malaysia') which was the same ground as the one in the original detention order. In other words, the plaintiff's original detention order had been extended for a further period of two years on the same ground or reason as the one on which the detention order was originally made. In both the original detention order and the extended detention order the plaintiff was detained F solely on the ground or reason that his detention was necessary to prevent him from taking part in activities that were prejudicial to the security of Malaysia.

As to the necessity of grounds under s 11(2) in cases of extension orders, the learned judge said (see p 12 of the reported Court of Appeal judgment):

... unless s 11 applies (and in my judgment, I hold that it does not apply to the G present case because the extended order was made on the same ground as that on which the original order of detention was made), there was no requirement to furnish the plaintiff with a written statement of the grounds on which the extended order was made and the allegations of fact on which the order was based (under s 11(2)(b)(i) and (ii)). Here, in the present case, there was no need to supply the grounds on which the extended detention order was made H (under s 11 (2)(b)(i)) nor the allegations on which the order was based (under s 11(2)(b)(ii)) all over again as that had already been supplied to him when the original detention order was made. Since the ground (reason) that was given for his continued detention in the extended detention order was the same as the ground (reason) in the original detention order, the proviso to sub-s (7) of s 8 would not apply to the plaintiff in the present case. It was, I therefore, not required for the plaintiff (whose detention was extended for the same reason or ground as the reason or ground in the original detention order) to be furnished with a written statement of the grounds and allegations under s 11(2)(b).

> For s 11(2) to apply when a detention order is extended under s 8(7), the extension must be made on different grounds or partly on different grounds. It will not apply, as in the present case, when a detention order is extended on the same grounds as the grounds on the original detention order.

On this same issue of whether the grounds must be stated in the extension order, Abdul Malek Ahmad JCA, in his dissenting judgment, said (see p 14 of the reported Court of Appeal judgment):

> In my view, reading and re-reading the said provision, whether the grounds for detention in the extension order are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order, the grounds for detention must be stated before the proviso to that subsection can come into effect. There is certainly no suggestion at all that where the grounds for detention are the same in the extension order as in the detention order, they need not be stated as they are implied. At the very least, the person under detention should be informed in writing that the grounds for detention in the extension order are the same as the grounds for detention in the detention order even if they are not so stated specifically.

As to whether the grounds should be in the extension order, the learned judge said (see p 17 of the reported Court of Appeal judgment):

> The proviso says that if a detention order is extended on different grounds or partly on different grounds, the person to whom it relates shall have the same rights under s 11 of the Act as if the order extended was a fresh order.
>
> Does this then mean that where the grounds for detention in the extension order are the same as the grounds for detention in the detention order, then the person detained is not entitled or loses his entitlement to make representations? This appears to be the only conclusion one can draw from the relevant provisions in the Act but this is the more reason why it is imperative that the grounds for detention must be stated for all extension orders so that the person detained after the expiry of the detention order will be able to know whether he can make any representations at all based on the grounds for detention stated in the extension order whether they are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order ...
>
> Since the grounds for detention have not been stated in the extension order, I would agree with the learned trial judge that the extension order is invalid.

As to whether the grounds for detention are as stated in ss 8(1) or 11(2), Abdul Malek Ahmad JCA said (see pp 15–16 of the reported Court of Appeal judgment):

> I would like to stress the point that 'purposes' and 'grounds' are two different things. The purposes are as stated in sub-s (1) of s 8 of the Act but the grounds for detention must be given in the statement in writing as provided for in subpara (i) of para (b) of sub-s (2) of s 11 of the Act together with the allegations of fact and other particulars as stated in subparas (ii) and (iii) of that same paragraph.
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> Accordingly, the words 'the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services

therein or to the economic life thereof' in sub-s (1) of s 8 of the Act are definitely not the grounds for detention but only the purposes for the detention.

My view is strengthened by the use of the word 'purposes' in sub-s (5) of s 8 of the Act which begins with 'If the Minister is satisfied that for any of the purposes mentioned in sub-s (1) ...'. So when the words 'acting in any manner prejudicial to the security of Malaysia' appear in both the detention order and the extension order, they do not qualify as a ground for detention but only as a purpose for the detention.

In support for his view, the learned judge referred to the case of *Karam Singh v Menteri Hal Ehwal Dalam Negeri [Minister of Home Affairs], Malaysia* [1969] 2 MLJ 129 at p 147) wherein the Federal Court, inter alia, said:

> In my judgment, the words 'with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein' in s 8(1)(a) of the Internal Security Act do not indicate the grounds for a person's detention; they indicate its purpose or purposes. It is true that the grounds for a person's detention must be given, but grounds are quite distinct from purposes. ... Put in different words, what the grounds supplied and the order of detention say is this: because (grounds) you the appellant have since 1957 consistently acted in a manner prejudicial to the security of Malaysia, the Yang di-Pertuan Agong is satisfied that it is necessary to direct that you be detained with a view to (purposes) preventing you from acting in any manner prejudicial to the security of Malaysia or to the maintenance of public order or to the maintenance of essential services in Malaysia. ... But in my judgment there is no need for the grounds to be identical with any or all of the purposes of detention. The grounds supplied could be in words totally different from the statement of the purposes of detention.

For the reasons given by the learned judge (Abdul Malek Ahmad JCA) I agree that s 8(1) merely specifies the three purposes for detention. Thus, in the context of the aforementioned relevant provisions of the Act, the grounds must mean the grounds referred to in s 11 of the Act which reads:

> Representations against detention order
>
> (1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.
>
> (2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order
>
> (a) be informed of his right to make representations to an Advisory Board under subsection (1); and
>
> (b) be furnished by the Minister with a statement in writing —
>
> (i) of the grounds on which the order is made;
>
> (ii) of the allegations of fact on which the order is based; and
>
> (iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representation against the order to the Advisory Board.
>
> (3) The Yang di-Pertuan Agong may make rules as to the manner in which representations may be made under this section and for regulating the procedure of Advisory Boards.

As s 11(1) makes reference to s 8(1), it would therefore be appropriate for me to cite the section. Section 8(1) reads:

> Power to order detention or restriction of persons
>
> (1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

I find nothing in s 8(1) that can indicate that grounds are to be stated in the detention order. I have also read through carefully the other subsections of s 8 and found that only s 8(7) makes mention of 'grounds'. I had, at the outset of my judgment, quoted s 8(7) of the Act. The proviso to s 8(7) unequivocally specifies that those whose detentions have been extended on different grounds or partly on different grounds are entitled to exercise the same rights under s 11 as if the extended orders are initial orders. In other words, they are entitled to make representations against the extension orders to the Advisory Board. Such entitlement would invoke the application of s 11(2)(b) which, inter alia, requires the detainee to be furnished with a statement in writing of the grounds on which the extension order was made. The very existence of s 11(2)(b)(i) would clearly support my view that the initial orders under s 8(1) and the extension orders under s 8(7) need not specify the grounds. Otherwise s 11(2)(b)(i) would be redundant. Anyway, I cannot find anything in s 8(7) that can even suggest that the grounds must be stated in the extension order. If grounds are not expected to be stated in the initial order, how then can it be expected that they should be in the extension order when that extension order merely directs that the duration of the detention order be extended for a certain further period not exceeding two years at a time? As such, I am of the view that it is not necessary to state the grounds in the extension order. In the circumstances, the appellant's contention that the grounds must be stated in the extension order is without merit.

Having held that grounds need not be stated in the extension order, the question that now arises is whether the appellant is entitled to be served with the statement under s 11(2)(b)(i) of the Act? It is obvious from the proviso to s 8(7) that the appellant is entitled to the statement if the extension order is made on grounds different from those stated in the initial order or if the extension order is made partly on the same grounds and partly on different grounds from those stated in the initial order. This is so because the proviso stipulates that under those circumstances, the extension order is to be considered as if it was a fresh order, and hence the appellant is entitled to make representations to the Advisory Board under s 11 of the Act. And the statement is required by s 11(2)(b)(i) of the Act. This evidently means that if the extension order is made on the same grounds, then the order is not deemed a fresh order and therefore no question of representation under s 11 arises and consequently no statement under s 11(2)(b)(i) is required. Simply stated, a statement under s 11(2)(b)(i) of the Act need not be made

in cases where the extension order is made on the same grounds as those on which the initial order was made. On this issue, I am in agreement with NH Chan JCA's view as quoted above. For the reasons stated above, my answer to the question referred to this court is in the affirmative, ie the extension order is a valid order.

I have shown this draft judgment to my learned brothers, Mohamed Dzaiddin Chief Justice and Steve Shim CJ (Sabah and Sarawak), who agreed with it.

Accordingly, this appeal is dismissed with costs. Deposit to the respondents to account of taxed costs.

Appeal dismissed.

Reported by Lim Lee Na